
By: **Delegates Hubbard, Benson, Haynes, Morhaim, Murray,
Nathan-Pulliam, Oaks, Pendergrass, Rawlings, and ~~V. Turner~~ V. Turner,
Hurson, Hammen, Bromwell, Costa, Donoghue, Elliott, Goldwater,
Mandel, McDonough, Redmer, Rosenberg, Rudolph, Smigiel, and
Weldon**

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House action: Adopted
Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Maryland Quality Home Care Services Commission**

3 FOR the purpose of establishing the Maryland Quality Home Care Services
4 Commission; providing for the purpose and composition of the Commission;
5 providing for the terms of members of the Commission; requiring the
6 Commission to appoint an executive director; requiring the Commission to
7 consult with certain individual providers before taking certain actions; requiring
8 the Commission to establish certain qualifications and requirements, provide
9 certain training opportunities, provide certain referrals, and coordinate with
10 certain agencies; authorizing the Commission to advise certain agencies on
11 certain regulations; prohibiting the Commission from providing a certain
12 referral under certain circumstances; authorizing the Commission to adopt
13 certain regulations; ~~authorizing the Commission to engage in carrying out~~
14 ~~certain provisions~~; ~~requiring the Commission to be considered an employer of~~
15 ~~certain providers for certain purposes~~; ~~authorizing certain providers to engage~~
16 ~~in certain collective bargaining activities~~; ~~prohibiting a certain provider or group~~
17 ~~of providers from engaging in certain activities related to a strike~~; ~~prohibiting~~
18 ~~certain wage and benefit increases from taking effect without approval of the~~
19 ~~General Assembly~~; prohibiting a certain provider from being considered as a
20 certain employee; prohibiting the Commission from being considered the
21 employer of a certain provider for certain purposes; providing that consumers
22 have certain rights concerning the employment of certain providers; prohibiting
23 the Commission from reducing certain hours of certain services; providing for a
24 certain construction of this Act; requiring the Commission, in consultation with

1 certain entities, to submit a certain report on or before a certain date; requiring
 2 the report to include certain information; specifying the terms of the initial
 3 members of the Commission; ~~authorizing the Commission to be eligible to~~
 4 ~~participate in a certain employees' system; requiring the Department of Health~~
 5 ~~and Mental Hygiene to seek certain federal funding to make a certain report to~~
 6 ~~certain committees of the General Assembly; defining certain terms; and~~
 7 generally relating to the Maryland Quality Home Care Services Commission.

8 BY adding to

9 Article - Health - General

10 Section 20-801 through 20-810, inclusive, to be under the new subtitle "Subtitle
 11 8. Maryland Quality Home Care Services Commission"

12 Annotated Code of Maryland

13 (2000 Replacement Volume and 2002 Supplement)

14 ~~BY repealing and reenacting, without amendments,~~

15 ~~Article - State Personnel and Pensions~~

16 ~~Section 31-101(a) and (f)~~

17 ~~Annotated Code of Maryland~~

18 ~~(1997 Replacement Volume and 2002 Supplement)~~

19 ~~BY repealing and reenacting, with amendments,~~

20 ~~Article - State Personnel and Pensions~~

21 ~~Section 31-102~~

22 ~~Annotated Code of Maryland~~

23 ~~(1997 Replacement Volume and 2002 Supplement)~~

24 Preamble

25 WHEREAS, Thousands of Maryland seniors and individuals with disabilities
 26 live independently in their own homes, which they prefer and which are less costly
 27 than institutional care such as nursing homes; and

28 WHEREAS, Many Maryland seniors and individuals with disabilities currently
 29 receive personal home care services from individual providers hired directly by the
 30 individuals under State and federally funded programs; and

31 WHEREAS, Quality personal home care services allow Maryland seniors,
 32 individuals with disabilities, and the individuals' families the choice of allowing
 33 seniors and individuals with disabilities to remain in their homes, rather than forcing
 34 them into institutional care; and

35 WHEREAS, Home and community-based options are less costly than nursing
 36 homes and other institutional care, and therefore save Maryland taxpayers
 37 significant amounts of money; and

1 WHEREAS, There is a growing shortage of qualified individuals to provide
2 personal home care services to seniors and individuals with disabilities in the State,
3 and Maryland's Task Force on Personal Care in 1999 found "a documented problem in
4 securing and retaining quality care givers" due, in part, to a lack of consumer
5 involvement and inadequate State coordination; and

6 WHEREAS, Consumers are well served by programs that support
7 self-direction, individual autonomy, dignity, and choice; now, therefore

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article - Health - General**

11 SUBTITLE 8. MARYLAND QUALITY HOME CARE SERVICES COMMISSION.

12 20-801.

13 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
14 INDICATED.

15 (B) (1) "AGENCY" MEANS A STATE OR LOCAL AGENCY THAT COORDINATES
16 PERSONAL HOME CARE SERVICES THROUGH AN INDIVIDUAL PROVIDER PROGRAM.

17 (2) "AGENCY" INCLUDES:

18 (I) THE DEPARTMENT;

19 (II) THE DEPARTMENT OF HUMAN RESOURCES; AND

20 (III) THE DEPARTMENT OF AGING.

21 (C) "COMMISSION" MEANS THE MARYLAND QUALITY HOME CARE SERVICES
22 COMMISSION.

23 (D) "CONSUMER" MEANS AN INDIVIDUAL WHO RECEIVES PERSONAL HOME
24 CARE SERVICES FROM AN INDIVIDUAL PROVIDER THROUGH AN INDIVIDUAL
25 PROVIDER PROGRAM.

26 (E) (1) "INDIVIDUAL PROVIDER" MEANS AN INDIVIDUAL WHO CONTRACTS
27 WITH ~~AN A STATE~~ AGENCY TO PROVIDE PERSONAL HOME CARE SERVICES TO A
28 CONSUMER THROUGH AN INDIVIDUAL PROVIDER PROGRAM.

29 (2) "INDIVIDUAL PROVIDER" INCLUDES ~~A SELF-EMPLOYED AN~~
30 ATTENDANT, COMMUNITY ATTENDANT, OR PERSONAL ASSISTANT PROVIDING
31 SERVICES DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

32 (F) (1) "INDIVIDUAL PROVIDER PROGRAM" MEANS:

33 (I) THE MEDICAL ASSISTANCE PERSONAL CARE PROGRAM;

1 (II) THE COMMUNITY ATTENDANT SERVICES AND SUPPORT
 2 PROGRAM, ALSO KNOWN AS LIVING AT HOME: MARYLAND COMMUNITY CHOICES
 3 PROGRAM;

4 (III) THE WAIVER FOR OLDER ADULTS;

5 (IV) THE ATTENDANT CARE PROGRAM; AND

6 (V) THE SENIOR CARE PROGRAM.

7 (2) "INDIVIDUAL PROVIDER PROGRAM" DOES NOT INCLUDE:

8 (I) MEDICAID HOME HEALTH CARE;

9 (II) MEDICARE HOME HEALTH CARE;

10 (III) ASSISTED LIVING;

11 (IV) A SKILLED NURSING FACILITY SERVICE; OR

12 (V) ANY OTHER FACILITY-BASED SERVICES.

13 (G) "PERSONAL HOME CARE SERVICES" MEANS PERSONAL CARE OR RESPITE
 14 CARE SERVICES PROVIDED TO A CONSUMER IN THE CONSUMER'S HOME THROUGH
 15 AN INDIVIDUAL PROVIDER PROGRAM.

16 20-802.

17 (A) THERE IS A MARYLAND QUALITY HOME CARE SERVICES COMMISSION.

18 (B) THE PURPOSE OF THE COMMISSION IS TO:

19 (1) ENSURE THAT THE QUALITY OF PERSONAL HOME CARE SERVICES
 20 PROVIDED BY INDIVIDUAL PROVIDERS IS IMPROVED THROUGH REGULATION,
 21 INCREASED ACCOUNTABILITY, AND THE ENHANCED ABILITY OF CONSUMERS TO
 22 OBTAIN PERSONAL HOME CARE SERVICES;

23 (2) ENCOURAGE STABILITY IN THE INDIVIDUAL PROVIDER WORKFORCE
 24 THROUGH ~~COLLECTIVE BARGAINING AND~~ TRAINING OPPORTUNITIES; AND

25 (3) RECRUIT FOR, TRAIN, STABILIZE, AND IMPROVE THE INDIVIDUAL
 26 PROVIDER WORKFORCE.

27 20-803.

28 (A) (1) THE COMMISSION CONSISTS OF ~~14~~ 14 MEMBERS AND ~~SIX~~ SEVEN
 29 ALTERNATE MEMBERS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND
 30 CONSENT OF THE SENATE COMMITTEE WITH JURISDICTION OVER THE COMMISSION.

31 (2) OF THE ~~14~~ 14 MEMBERS:

1 (I) ~~SIX SEVEN~~ MEMBERS SHALL BE CURRENT OR FORMER
2 CONSUMERS OF PERSONAL HOME CARE SERVICES; AND

3 (II) ~~FIVE SEVEN~~ MEMBERS SHALL BE FROM EACH OF THE
4 FOLLOWING AGENCIES AND ORGANIZATIONS:

5 1. THE GOVERNOR'S OFFICE FOR INDIVIDUALS WITH
6 DISABILITIES;

7 2. THE MARYLAND MEDICAL ASSISTANCE PROGRAM;

8 3. THE MARYLAND STATEWIDE INDEPENDENT LIVING
9 COUNCIL;

10 4. THE MARYLAND DISABILITY LAW CENTER; ~~AND~~

11 5. THE DEPARTMENT OF AGING;

12 6. THE NATIONAL CAPITAL HOME CARE ASSOCIATION; AND

13 ~~5-7.~~ AN ORGANIZATION REPRESENTING SENIOR CITIZENS.

14 (3) THE ~~SIX SEVEN~~ ALTERNATE MEMBERS:

15 (I) SHALL BE FORMER CONSUMERS OF PERSONAL HOME CARE
16 SERVICES;

17 (II) SHALL ATTEND AND PARTICIPATE IN COMMISSION
18 MEETINGS; AND

19 (III) MAY ONLY VOTE IN THE ABSENCE OF THE CONSUMER
20 MEMBER FOR WHOM THE INDIVIDUAL SERVES AS AN ALTERNATE.

21 (B) (1) THE TERM OF A MEMBER IS 3 YEARS.

22 (2) THE TERMS OF THE MEMBERS ARE STAGGERED AS REQUIRED BY
23 THE TERMS PROVIDED FOR MEMBERS OF THE COMMISSION ON OCTOBER 1, 2003.

24 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A
25 SUCCESSOR IS APPOINTED AND QUALIFIES.

26 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
27 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
28 QUALIFIES.

29 (5) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.
30 20-804.

31 THE COMMISSION SHALL APPOINT AN EXECUTIVE DIRECTOR WHO SHALL BE
32 THE CHIEF ADMINISTRATIVE OFFICER OF THE COMMISSION.

1 20-805.

2 (A) PRIOR TO CARRYING OUT THE AUTHORITY GRANTED TO THE COMMISSION
3 UNDER THIS SECTION, THE COMMISSION SHALL:

4 (1) CONSULT WITH THE INDIVIDUAL PROVIDER; AND

5 (2) AUTHORIZE THE INDIVIDUAL PROVIDER TO SELECT A
6 REPRESENTATIVE OR AGENT TO REPRESENT THE VIEWS OF THE INDIVIDUAL
7 PROVIDER TO THE COMMISSION.

8 ~~(A)~~ (B) THE COMMISSION SHALL:

9 (1) ESTABLISH QUALIFICATIONS AND REQUIREMENTS FOR AN
10 INDIVIDUAL PROVIDER THAT:

11 (I) COMPLY WITH MINIMUM REQUIREMENTS UNDER CURRENT
12 LAWS; AND

13 (II) REQUIRE CONFIRMATION THAT AN INDIVIDUAL PROVIDER IS
14 NOT LISTED ON ANY LONG-TERM CARE ABUSE AND NEGLECT REGISTRY;

15 (2) PROVIDE TRAINING OPPORTUNITIES FOR INDIVIDUAL PROVIDERS
16 AND CONSUMERS OF PERSONAL HOME CARE SERVICES;

17 (3) ESTABLISH OR USE A REFERRAL LIST OF INDIVIDUAL PROVIDERS;

18 (4) PROVIDE ROUTINE, EMERGENCY, AND RESPITE REFERRALS OF AN
19 INDIVIDUAL PROVIDER TO A CONSUMER; AND

20 (5) COORDINATE WITH AN AGENCY TO PROVIDE PERSONAL HOME CARE
21 SERVICES.

22 ~~(B)~~ (C) THE COMMISSION:

23 (1) SHALL COORDINATE THE ESTABLISHMENT OR REVISION OF
24 QUALIFICATIONS AND REQUIREMENTS OF AN INDIVIDUAL PROVIDER WITH AN
25 AGENCY;

26 (2) MAY ADVISE AN AGENCY ON REGULATIONS GOVERNING
27 QUALIFICATIONS AND REQUIREMENTS OF AN INDIVIDUAL PROVIDER; AND

28 (3) MAY NOT PROVIDE A REFERRAL OF AN INDIVIDUAL PROVIDER
29 UNLESS THE INDIVIDUAL PROVIDER MEETS:

30 (I) QUALIFICATIONS AND REQUIREMENTS ESTABLISHED BY THE
31 COMMISSION; AND

32 (II) MINIMUM REQUIREMENTS FOR TRAINING ESTABLISHED BY
33 THE COMMISSION.

1 ~~(C)~~ (D) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THE
2 PROVISIONS OF THIS SUBTITLE.

3 20-806.

4 IN CARRYING OUT THE PROVISIONS OF THIS SUBTITLE, THE COMMISSION MAY:

5 (1) MAKE, EXECUTE, AND ENTER INTO CONTRACTS AND OTHER
6 INSTRUMENTS NECESSARY FOR THE PERFORMANCE OF ITS DUTIES, INCLUDING
7 CONTRACTS WITH PUBLIC AND PRIVATE AGENCIES, ORGANIZATIONS,
8 CORPORATIONS, AND INDIVIDUALS TO PAY THE COMMISSION FOR SERVICES
9 RENDERED OR FURNISHED;

10 (2) MAINTAIN OFFICES;

11 (3) EMPLOY AND DISCHARGE EMPLOYEES, AGENTS, AND CONTRACTORS
12 AS NECESSARY;

13 (4) PRESCRIBE EMPLOYEE DUTIES, POWERS, AND COMPENSATION;

14 (5) INCUR EXPENSES AND CREATE LIABILITIES FOR THE
15 ADMINISTRATION OF THE COMMISSION;

16 (6) SOLICIT AND ACCEPT FOR USE ANY GRANT OF MONEY, SERVICES, OR
17 PROPERTY FROM THE FEDERAL OR STATE GOVERNMENT, ANY POLITICAL
18 SUBDIVISION, OR AN AGENCY;

19 (7) COORDINATE ITS ACTIVITIES AND COOPERATE WITH SIMILAR
20 AGENCIES IN OTHER STATES;

21 (8) ESTABLISH A TECHNICAL ADVISORY COMMITTEE TO ASSIST THE
22 COMMISSION;

23 (9) RETAIN RECORDS;

24 (10) ENGAGE IN RESEARCH AND GATHERING OF RELEVANT STATISTICS;

25 (11) ACQUIRE, HOLD, OR DISPOSE OF REAL OR PERSONAL PROPERTY;

26 (12) CONSTRUCT, LEASE, OR OTHERWISE PROVIDE FACILITIES FOR THE
27 ADMINISTRATION OF THE COMMISSION;

28 (13) SUE AND BE SUED;

29 (14) DELEGATE AUTHORITY AS NECESSARY TO ADMINISTER THE
30 COMMISSION; AND

31 (15) OFFER RECRUITMENT, TRAINING, AND REFERRAL SERVICES TO
32 OUTSIDE ENTITIES FOR A FEE.

1 20-807.

2 ~~(A) (1) THE COMMISSION SHALL BE CONSIDERED THE EMPLOYER OF AN~~
3 ~~INDIVIDUAL PROVIDER FOR PURPOSES OF COLLECTIVE BARGAINING.~~

4 ~~(2) AN INDIVIDUAL PROVIDER MAY:~~

5 ~~(I) FORM, JOIN, AND PARTICIPATE IN AN EMPLOYEE~~
6 ~~ORGANIZATION; AND~~

7 ~~(II) BARGAIN COLLECTIVELY THROUGH A REPRESENTATIVE THE~~
8 ~~INDIVIDUAL PROVIDER HAS CHOSEN ON MATTERS CONCERNING EMPLOYMENT~~
9 ~~RELATIONS.~~

10 ~~(3) AN INDIVIDUAL PROVIDER OR GROUP OF INDIVIDUAL PROVIDERS~~
11 ~~MAY NOT ENGAGE IN, INDUCE, INITIATE, OR RATIFY A STRIKE.~~

12 ~~(4) AN INCREASE IN INDIVIDUAL PROVIDER WAGES OR BENEFITS~~
13 ~~NEGOTIATED OR AGREED TO BY THE COMMISSION MAY NOT TAKE EFFECT UNLESS~~
14 ~~APPROVED BY THE GENERAL ASSEMBLY.~~

15 ~~(B) (A)~~ (A) AN INDIVIDUAL PROVIDER MAY NOT BE CONSIDERED AN EMPLOYEE
16 OF THE STATE.

17 ~~(C) (B)~~ (B) THE COMMISSION MAY NOT BE CONSIDERED THE EMPLOYER OF AN
18 INDIVIDUAL PROVIDER FOR PURPOSES OF VICARIOUS LIABILITY DUE TO
19 NEGLIGENCE OR AN INTENTIONAL TORT OF AN INDIVIDUAL PROVIDER.

20 20-808.

21 (A) A CONSUMER SHALL HAVE THE RIGHT TO SELECT, SUPERVISE, AND
22 TERMINATE THE WORK OF AN INDIVIDUAL PROVIDER WHO PROVIDES PERSONAL
23 HOME CARE SERVICES TO THE CONSUMER.

24 (B) THE COMMISSION MAY NOT REDUCE THE HOURS OF PERSONAL CARE
25 SERVICES PROVIDED TO A CONSUMER BELOW THE AMOUNT OF HOURS DETERMINED
26 TO BE NECESSARY BY AN AGENCY.

27 20-809.

28 NOTHING IN THE SUBTITLE MAY BE CONSTRUED TO DIMINISH OBLIGATIONS OF
29 THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION TO AN INDIVIDUAL
30 PROVIDER PROGRAM, INCLUDING:

31 (1) PAYROLL SERVICES;

32 (2) FISCAL INTERMEDIARY SERVICES; OR

33 (3) PROVIDING PARTICULAR BENEFITS TO AN INDIVIDUAL PROVIDER.

1 20-810.

2 (A) ON OR BEFORE OCTOBER 1, 2005, THE COMMISSION, IN CONSULTATION
3 WITH THE DEPARTMENT AND THE GOVERNOR'S OFFICE FOR INDIVIDUALS WITH
4 DISABILITIES, SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO §
5 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

6 (B) THE REPORT UNDER SUBSECTION (A) OF THIS SECTION SHALL EVALUATE:

7 (1) THE COMMISSION'S PROGRESS IN IMPROVING SERVICES TO
8 CONSUMERS AND ADDRESSING IMPROVEMENTS IN PERSONAL HOME CARE
9 SERVICES BY CREATING A MORE STABLE WORKFORCE; AND

10 (2) THE ROLE OF THE COMMISSION IN ADVOCATING IMPROVEMENTS
11 FOR HOME AND COMMUNITY-BASED SERVICES IN THE STATE, INCLUDING IN
12 INDIVIDUAL PROVIDER PROGRAMS.

13 ~~Article – State Personnel and Pensions~~

14 ~~31-101.~~

15 (a) ~~In this subtitle the following words have the meanings indicated.~~

16 (f) ~~"Employees' system" means the Employees' Retirement System or the~~
17 ~~Employees' Pension System.~~

18 ~~31-102.~~

19 ~~Subject to § 22-202(b) of this article, the governmental units that are eligible to~~
20 ~~participate in the employees' systems are:~~

21 (1) ~~a political subdivision of the State, including:~~

22 (i) ~~a county;~~

23 (ii) ~~a municipal corporation; and~~

24 (iii) ~~a special taxing area; and~~

25 (2) ~~the following governmental units:~~

26 (i) ~~an agency on aging, as designated by the legislative body of the~~
27 ~~agency on aging;~~

28 (ii) ~~the Allegany County Transit Authority;~~

29 (iii) ~~subject to § 31-104 of this subtitle, the Baltimore Metropolitan~~
30 ~~Council;~~

31 (iv) ~~a board or commission created by an Act of the General~~
32 ~~Assembly for public purpose and not for the profit of a private person;~~

- 1 (v) subject to § 31-105 of this subtitle, the Canal Place
2 ~~Preservation and Development Authority;~~
- 3 (vi) the Chesapeake Bay Commission;
- 4 (vii) a cooperative library commission;
- 5 (viii) subject to § 31-103 of this subtitle, a community action agency,
6 ~~as designated by the legislative body of the community action agency;~~
- 7 (ix) a fire department that receives any of its funds from or through
8 a county, municipal corporation, special taxing area, or other political subdivision of
9 the State;
- 10 (x) the Health Planning Council of Appalachia;
- 11 (xi) the Howard County Economic Development Authority;
- 12 (xii) the Interstate Commission on the Potomac River Basin;
- 13 (xiii) the Lower Shore Private Industry Council, Inc.;
- 14 (xiv) the Maryland Environmental Service;
- 15 (xv) subject to § 31-106 of this subtitle, the Maryland Stadium
16 ~~Authority;~~
- 17 (xvi) a public library association or organization;
- 18 (xvii) the St. Mary's County Nursing Home;
- 19 (xviii) the Tri-County Council for Western Maryland, Inc.;
- 20 (xix) the Tri-County Council for Southern Maryland;
- 21 (xx) subject to § 31-107 of this subtitle, the University of Maryland
22 ~~Medical System Corporation;~~
- 23 (xxi) the Upper Potomac River Commission;
- 24 (xxii) subject to § 31-106.1 of this subtitle, the Maryland African
25 ~~American Museum Corporation; [and]~~
- 26 (xxiii) the Garrett County Office for Children, Youth and Families;
27 ~~AND~~
- 28 (XXIV) ~~THE MARYLAND QUALITY HOME CARE SERVICES~~
29 ~~COMMISSION.~~

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
31 Health and Mental Hygiene shall:

1 (a) seek federal funding for the Maryland Quality Home Services Commission
2 established under this Act by applying for federal matching funds from the Centers
3 for Medicare and Medicaid Services;

4 (b) maximize efforts to reprioritize funding from the Real Choice Systems
5 Change Grant to be used to fund the Maryland Quality Home Services Commission;
6 and

7 (c) report, in accordance with § 2-1246 of the State Government Article, to the
8 Senate Finance Committee and the House Health and Government Operations
9 Committee, on or before July 1, 2004, on the efforts to access federal funding as
10 required under items (a) and (b) of this Section.

11 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That the terms of the initial
12 members of the Maryland Quality Home Care Services Commission shall expire as
13 follows:

14 (1) 3 consumer members and 2 of the organizational or agency members
15 in 2005; and

16 (2) 3 consumer members and 3 of the organizational or agency members
17 in 2006.

18 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect October 1, 2003.